

Executive Summary and Appendices
to the
Indian Firming Study Commission Final Report, dated January 6, 2006

INDIAN FIRING STUDY COMMISSION MEMBERS

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Dave Roberts	Salt River Project
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EXECUTIVE SUMMARY

This report of the Indian Firming Study Commission (Study Commission) will provide as background an overview and description of the State's obligation for Indian Firming and an overview of the modeling efforts completed by Arizona Department of Water Resources (ADWR) staff to determine the estimated volumetric obligation for Indian Firming. Additionally, this report will summarize the solution elements reviewed by the Study Commission, including the water supply availability analysis and a review of the estimated cost and availability of funds to meet the obligation. Finally, the report will provide the recommendations from the Study Commission to the Arizona Legislature.

In December of 2004 President Bush signed legislation approving the Arizona Water Settlements Act (Settlement Act) P.L. 108-451, settling longtime claims to water by the Gila River Indian Community (Community) and the Tohono O'odham Nation. A key provision within the Settlement Act is the provision for enacting State legislation creating an Indian Firming Program (Firming Program) for the Community and future Indian water rights settlements. The provision authorizes the Secretary of the Interior (Secretary) and the State of Arizona (State) to develop a Firming Program to ensure that 60,648 acre-feet of non-Indian Agricultural priority Central Arizona Project (CAP) water made available for re-allocation to Indian tribes shall, for a 100-year period, be delivered during water shortages in the same manner as water with an municipal and industrial (M&I) priority is delivered during water shortages. Because the non-Indian Agricultural priority water has the lowest priority on the Central Arizona Project (CAP) system, in times of shortage this supply would be reduced or eliminated before M&I and Indian priority supplies are impacted. Therefore, in the case of reallocating non-Indian Agricultural priority water to the tribes, the parties to the Settlement Act agreed to increase the reliability (firm) of this block of water in times of shortage on the Colorado River. The importance of this provision is underscored by the clause in the Settlement that State legislation be enacted as part of the enforceability conditions to the Settlement.

The Settlement further identifies specific firming responsibilities for the Secretary and the State. Of the 60,648 acre-feet, the Secretary has responsibility for 28,200 acre-feet, as required by the Southern Arizona Water Rights Settlement Act (SAWRSA). The State agreed to firm 15,000 acre-feet for the Community, consistent with the Settlement. Responsibility for the remaining 17,447 acre-feet, which is to be dedicated for future Indian settlements, was divided equally (8,724 acre-feet each) between the Secretary and the State. Therefore, the State's total responsibility under this program is 23,724 acre-feet.

In the spring of 2005 the Arizona Legislature created the Indian Firming Study Commission (Study Commission) to develop the Firming Program for Arizona (Appendix I HB 2728, Section 12) by:

- Reviewing the modeling assumptions that were developed by the Arizona Department of Water Resources to estimate the volume of water needed to meet the firming obligation;
- Identifying options for meeting the firming obligations;
- Identifying cost components for each of the firming options;
- Identifying funding sources appropriate to finance the options; and
- Identifying the necessary changes to the Arizona Revised Statutes to meet the firming obligations.

Summary of Recommendations

The Study Commission reviewed several options for meeting the State's obligation. First, however, the Study Commission identified the following issues that needed to be considered prior to developing possible solution elements:

- The capability of delivering water to the Community whether it is stored and recovered, or directly delivered for use or storage by the Community.
- In times of shortage well capacity may be limited for recovery due to the need for increased groundwater pumping.
- Competition for excess supplies will increase over the next ten, twenty, fifty, and even one hundred years. Competition for underground storage capacity could also increase in the early years.
- How can the firming program be implemented while ensuring that the goals of the Active Management Areas are being met?

After reviewing estimated shortages, water supply availability, mechanisms for ensuring water would be made available to the tribes in times of shortage, and potential costs and funding availability the Study Commission concluded that the Arizona Water Banking Authority (AWBA), in cooperation with the Arizona Department of Water Resources (ADWR) and the Central Arizona Water Conservation District (CAWCD), is the most appropriate and best suited entity to fulfill the State's obligations described in Section 105(b) of the Settlements Act. The Study Commission recognizes that in order to fulfill this role, the AWBA needs to be provided with sufficient funding or the mechanisms to develop the funding necessary to implement the Indian Firming Program on behalf of the State and recommends that the Arizona Legislature provide the AWBA with appropriate funding to do so. Additionally, the Study Commission recommends the AWBA be empowered by the Arizona Legislature to include the following programs to address annual Indian Firming needs within its Annual Plan of Operation and the 10-Year Plan:

- Traditional water banking (off reservation underground storage of excess water for future recovery and delivery);
- On-Reservation Storage and Recovery;
- Leasing of non-Indian Agricultural priority or Indian priority CAP water from Indian tribes;
- Importation of groundwater from authorized groundwater basins;
- Use of long-term storage credits developed by the AWBA prior the Enforceability Date, as defined in the Act.
- Enter into a Memorandum of Understanding with the United States for monetary or in-kind goods or services pursuant to section 306(b) of the Arizona Water Settlements Act; and
- Use of general fund appropriations and withdrawal fees, collected within the Phoenix, Pinal and Tucson Active Management Areas, to store and recover water, lease Indian CAP supplies, import groundwater, and deliver water to the Indian Communities for the purposes of satisfying the Section 105(b) State obligation.

APPENDIX I

SECTION 105 – ARIZONA WATER SETTLEMENTS ACT

SEC . 105. FIRING OF CENTRAL ARIZONA PROJECT INDIAN WATER.

(a) FIRING PROGRAM - The Secretary and the State shall develop a firing program to ensure that 60,648 acre-feet of the agricultural priority water made available pursuant to the master agreement and reallocated to Arizona Indian tribes under section 104(a)(1), shall for a 100-year period, be delivered during water shortages in the same manner as water with a municipal and industrial delivery priority in the Central Arizona Project system is delivered during water shortages.

(b) DUTIES –

(1) SECRETARY – The Secretary shall –

- (A) firm 28,200 acre-feet of agricultural priority water reallocated to the Tohono O’odham Nation under section 104(a)(1)(A)(ii); and
- (B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).

(2) STATE – The state shall –

- (A) firm 15,000 acre-feet of agricultural priority water reallocated to the Community under section 104(a)(1)(A)(i); and
- (B) firm 8,724 acre-feet of agricultural priority water reallocated to Arizona Indian tribes under section 104(a)(1)(A)(iii).
- (C) assist the Secretary in carrying out obligations of the secretary under paragraph (1)(A) in accordance with section 306 of the Southern Arizona Water Rights Settlement Amendments Act (as added by section 301).

(c) AUTHORIZATION OF APPROPRIATIONS – There are authorized to be appropriated to the Secretary such sums as are necessary to carry out the duties of the Secretary under subsection (b)(1).

APPENDIX II

SECTION 306 – ARIZONA WATER SETTLEMENTS ACT

SEC . 306. ADDITIONAL WATER DELIVERY.

- (a) IN GENERAL – In addition to the delivery of water described in section 304(a), the Secreatry shall deliver annually from the main project works of the central Arizona project, a total of 28,200 acre-feet of NIA priority water suitable for agricultural use, of which -
- (1) 23,000 acre-feet shall -
 - (A) be delivered to, and used by, the San Xavier Reservation; or
 - (B) otherwise be used by the nation in accordance with section 309; and
 - (2) 5,200 acre-feet shall -
 - (A) be delivered to, and used by, the eastern Schuk Toak District; or
 - (B) otherwise be used by the nation in accordance with section 309.
- (b) STATE CONTRIBUTION – To assist the Secretary in firming water under section 105(b)(1)(A) of the Arizona Water Settlements Act, the State shall contribute \$3,000,000 -
- (1) in accordance with a schedule that is acceptable to the secretary and the State; and
 - (2) in the form of cash or in-kind goods and services.

APPENDIX III

HOUSE BILL 2728

Sec. 12. Arizona water firming program study commission

A. The Arizona water firming program study commission is established. The purpose of the commission is to:

1. Study the options for a water firming program that would satisfy the requirements of section 105(b)(2) of the Arizona water settlements act (P.L. 108-451).
2. Identify appropriate mechanisms for the firming of water under the water firming program, including storage and recovery with specification of authorized entities to recover the water and determination of the financial structure for the recovery, as well as forbearance, and other alternative mechanisms.
3. Study the existing powers and duties of the Arizona water banking authority and the general statutory authorities necessary to implement the firming program and to make recommendations regarding appropriate statutory and regulatory provisions that are necessary to fully implement the water firming program.

B. The commission consists of members who are appointed by the director of the department of water resources and who represent at least the following entities:

1. Municipal and industrial priority central Arizona project water users.
2. Agricultural improvement districts established pursuant to title 48, chapter 17, Arizona Revised Statutes.
3. Non-Indian agricultural priority central Arizona project water users.
4. The Gila River Indian community.
5. The Tohono O'odham nation.
6. A multi-county water conservation district established under title 48, chapter 22, Arizona Revised Statutes.
7. The Arizona water banking authority established under title 45, chapter 14, Arizona Revised Statutes.
8. Hardrock mining industries.

C. The director of the department of water resources shall serve as chairperson of the commission. All members appointed by the director shall be knowledgeable in water resource management in this state. The president of the senate and the speaker of the House of Representatives, or their designees, shall serve as nonvoting ex officio members of the commission.

D. The department of water resources shall provide staff support for the commission.

E. The commission shall submit to the legislature an interim report of its activities on or before November 1, 2005 and shall report its final findings and recommendations to the legislature on or before January 6, 2006. The commission

shall provide copies of each report to the secretary of state and the director of the Arizona state library, archives and public records.

Sec. 13. Delayed repeal

Section 12 of this act, establishing the Arizona water firming program study commission, is repealed on June 1, 2006.

Sec. 14. State and tribal cooperation for acquisition of certain land

A. This state recognizes the interest of the Gila River Indian community to acquire and to place into trust status a parcel of land located within the exterior boundaries of the community's reservation. This state, through any of its authorized agencies, in cooperation with the community and on application of the community shall take actions in accordance with Arizona law for the acquisition of the property designated as section 36, township 4 south, range 4 east, Gila and Salt river base and meridian, to include the maximum right, title and interest in that property, including mineral rights as permitted by Arizona law.

B. For purposes of a finding by the secretary of interior or for any other legal requirement, the state and the community agree that this section combined with the enactment of the firming program authorized by this act fully satisfies section 207(c)(1)(E) of the Arizona water settlements act (P.L. 108-451).

Sec. 15. Conditional enactment; written notice

A. Sections 45-611, 45-2423, 45-2425 and 45-2457, Arizona Revised Statutes, as amended by this act, sections 45-2602 and 45-2604, Arizona Revised Statutes, as added by this act, title 45, chapter 15, articles 2, 3 and 6, Arizona Revised Statutes, as added by this act, and title 45, chapter 16, Arizona Revised Statutes, as added by this act, are effective only if on or before December 31, 2010 the United States secretary of interior publishes in the federal register the statements of findings described in sections 207(c)(1) and 302(c) of the Arizona water settlements act (P.L. 108-451).

B. The director of the department of water resources shall promptly provide written notice to the executive director of the Arizona legislative council of the date of publication of the findings or if the condition prescribed in subsection A of this section is not met. The date of publication is the effective date of the conditional enactment.

Sec. 16. Conditional delayed repeal; conditional enactment

A. Title 45, chapter 15, Arizona Revised Statutes, as added by this act, and section 11 of this act, relating to the establishment of the water firming program for Arizona Indian tribes, are repealed if the condition prescribed in section 15 of this act is not met.

B. Section 45-841.01, Arizona Revised Statutes, as amended by section 3 of this act, is effective only if the condition prescribed in section 15 of this act is not met.

